

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – IV (2021-2022)]
[Constituted under Section 21B of the Chartered Accountants
(Amendment) Act, 1949]

Findings under Rule 18(17) read with Rule 19(2) of the Chartered
Accountants (Procedure of Investigations of Professional and Other
Misconduct and Conduct of Cases) Rules, 2007.

File No. : [PR/13/16/DD/47/2016/DC/756/2018]

In the matter of:

Registrar of Companies,
NCT of Delhi & Haryana,
4th Floor, IFCI Tower,
61, Nehru Place,
NEW DELHI 110019.

.....Complainant

Versus

CA. Sudhanshu Bansal(M.No.500616),
Proprietor, M/s. S. Bansal & Associates,
72-C, Kishan Ganj,
Laxmi Nagar,
DELHI – 110092.

....Respondent

MEMBERS PRESENT:

CA. Nihar N Jambusaria, Presiding Officer
Shri Arun Kumar, IAS (Retd.) Govt. Nominee
Ms. Nita Chowdhury, IAS (Retd.) Govt. Nominee

DATE OF FINAL HEARING: 26.10.2021 through Video Conferencing

PARTIES PRESENT:

Ms. Kamna Sharma and Mr. Alok Pandey: Authorised
representative of the Complainant
CA. Sudhanshu Bansal : the Respondent
Advocate Raj Kumar Bansal : Counsel for the Respondent
(all appeared from their personal location)

Charges in Brief:-

1. The Committee noted that in the Prima-Facie Opinion formed by Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Respondent was held prima facie guilty of Professional and Other Misconduct falling within the meaning of item (2) Part IV of First Schedule and Item (7) of Part I of Second Schedule to the Chartered Accountants Act 1949. The said Item to the Schedule states as under: -

First schedule

Part IV

“(2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work;”

Second schedule

Part I

“(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;”

2. Background and Allegations :-

In the extant matter, the charge against the Respondent was that he had audited the financial statements of M/s Skyline Metal and Alloys Private Limited which turned out to be a bogus Company as per the investigation of the Complainant Department. Upon perusal of covering letter to the Complaint dated 12th January, 2016 (C-1 to C-3), it was observed that the trigger for investigation was a media report in the Times of India in February, 2015 (C-9) as well as media news on national television that the Companies namely (i) M/s Skyline Metal and Alloys Private Limited,

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(ii) M/s Goldmine Buildcon Private Limited, (iii) M/s Sunvision Agencies Private Limited and (iv) M/s Infolance Software Solutions Limited had given political donations of Rs. 50 Lakhs each to Aam Aadmi Party and that these Companies were bogus. The Complainant also stated that upon spot verification of the above stated Companies, it came to light that the same were not existing at the address given as per MCA portal. Further, during the course of inquiry, the Complainant Department observed that the Respondent had either audited the Balance Sheets of the said Companies or certified the e-forms digitally. Hence, the extant complaint was filed in case of **M/s. Skyline Metal and Alloys Private Limited** (hereinafter referred as **the 'Company'**). It was alleged against the Respondent that:

2.1 The Respondent had audited the Balance Sheet and Profit and Loss accounts of the Company for the Financial Years 2011-12 and 2012-13. Further, he had also certified certain forms of the Company such as Form 23B, Form 32 etc for different years.

2.2 In the Balance Sheet of the Company as on 31-03-2013, a sum of Rs. 157.17Lacs was shown as Security Premium account which was reflected in the Balance sheets of the Company since 2008. No form 2 was filed for allotment. This money was routed out from the Company by way of non-current investment of Rs. 71.95 lakhs without making any disclosure w.r.t investment of Rs. 10 Lakhs. Further Company had shown Rs. 88.67 lakhs as short term loans and advances without making requisite disclosure whether it was related party. However, this facts has not been commented upon by the Respondent in his audit report.

2.3 It was also noted that as per the media report, the Company had given donation of Rs. 50 Lacs to Aam Aadmi Party whereas it had reported a

loss of Rs. 11,077/-, Rs. 9,923/- and Rs. 10,667/- for the year ended 31.03.2011 to 31.03.2013.

- 2.4 Form 32 for appointment of Shri Deepak Agarwal was also certified by the Respondent which was filed for his appointment vide SRN B62939624 dated 20/12/12 whereas Shri Deepak Aggarwal has submitted that he had no concern with the captioned Company.

Brief facts of the Proceedings:

3. During hearing held on 27th September 2021, the Committee noted that Respondent along-with his Counsel was present during the hearing, but nobody from the Complainant Department was present. Being first hearing, the Respondent was put on oath. On being asked whether he pleaded guilty, the Respondent pleaded not guilty and opted to defend the matter against him. Since the Complainant was not present, in view of the principles of natural justice, the Committee adjourned hearing of the matter.
- 3.1 On the next hearing held on 26th October, 2021, the Committee noted that Ms. Kamna Sharma and Mr. Alok Pandey, Authorised representative of the Complainant Department and the Respondent along-with his Counsel were present before it for hearing. The Committee examined the Complainant based on submissions received from the Respondent. Based on the documents available on record and after considering the oral and written submissions made by the parties before it, the Committee concluded hearing in the matter.

Findings of the Committee

4. At the outset, the Committee noted that the Respondent had since the beginning of investigation in the matter had refused to either audited or certified any financials or forms of the Company. He had submitted to

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have no connection with it. It was noted that the Respondent had further submitted that:

"1. That the Registrar of Companies, NCT of Delhi & Haryana, New Delhi, filed a complaint cases before the Hon'ble Tis Hazari Court in year 2015 and I have been acquitted in all the cases by the Hon'ble Court in year 2020. ...

2. That apart of above complaint cases, the Registrar of Companies, NCT of Delhi & Haryana, New Delhi also filed an FIR with Economic Offence Wing, Delhi Police, New Delhi in year 2015 and after long investigation of 5 years including seizure of my Computer Hardware and Laptop in year 2015, arrested me on 20/08/2020 and sent to Judicial Custody and I was released on bail on 11/09/2020. In the above case more than 6 years passed but the EOW not able to file charge sheet before the Hon'ble Court."

5. It was noted that the Respondent had brought on record the said Court Orders. The Committee perused the Order of Hon'ble Tis Hazari District Court dated 23.12.2020, and observed that the issue before the said Court was primarily same as that before the Bench involving the same Company, Complainant and the Respondent. It was noted that the Judgement, inter-alia, observed as re-produced here -under:

"5.... In order to appreciate whether the accused liable for the alleged lapses the first question which needs to be decided is whether the accused was duly appointed as the auditor the accused company? The accused in his defence evidence has disputed that fact that he was

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working or was appointed as auditor of the company and his digital signatures have been misused unauthorizedly”

“6... The said report records that a show cause notice was issued to the company on 04.02.2015 and thereafter the enquiry was concluded very next day in less than 24 hours and report was also submitted to the Regional Director on 05.02.2015. A bare perusal of report dated. 05.02.2015 shows that it neither records version of company officials nor the accused auditor seeking explanation in respect of the alleged lapses. CW2 in his cross examination admitted that he did not visited the addresses of the company and do not recall whether any junior staff visited or not. He admitted that he did not stepped out of his office for any enquiry in the matter.”

“10. Complaint is absolutely silent as to what enquiry was done either by the ROC office or by the EOW in respect of the claim of the accused that he was not the auditor of M/s Skyline Metal and Alloys Private Limited and his digital signatures have been misused.”

“13. It is clear from the record that the Complainant has failed to bring on record any concrete document to show appointment of accused as auditor of the Company. The Complainant has made no efforts to seize/procure or produce from MCA archives the following record which was necessary for adjudication of fact in dispute regarding appointment of accused as auditor of company

- a. Minutes of AGM wherein the accused was appointed as auditor*
- b. Annual report showing appointment of accused as Auditor*
- c. Intimation to the Auditor by company*
- d. Written certificate of confirmation from the Auditor”*

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“15, In the absence of any discrete enquiry regarding the aspect of misuse of digital signature of accused by unauthorized person, it cannot be safely presumed that accused was appointed as Auditor of M/s Skyline Metal & Alloys Private Limited. The defence regarding misuse of digital signature was taken by accused at the very first instance in letter dated 07.07.2015 Ex. DW1/3 written to ROC. The complaint is filed on 16.07.2016 and during this interregnum period no pain was taken by the complainant department to verify the claim of the accused. In fact, the report dated 05.02.2015 Ex.CW1/4 shows that the enquiry was concluded within' a span of 24 hours without hearing the accused. No effort is made by the complainant department to apprise the court about the investigation done by the EOW in this regard...”

“16 DWI/Accused in his testimony also stated that he has handed over the digital signature with password to Mr. Vishal Aggarwal through email Ex.DW1/2 (Collyl in PFX file format who further forwarded it to Mr. Rajesh Jain, CA. No enquiry in respect of roles of Mr. Vishal Aggarwal is done and the evidence is silent in this regard. DW3 Insp. Afsar Raza EOW who is the investigating officer in FIR No. 159/15 u/s 420/467/468/471/120IP8C PS EOW also stated the accused Sudhanshu Bansal is only a suspect and the investigation continuing. He also did not put forth any positive involvement on the part of accused as Auditor in the companies in question.”

“17...in the absence of any concrete prosecution evidence, the Court cannot ignore the defense of accused where burden to be discharged is only by way of preponderance of probabilities. No doubt the professionals shall also be brought to book for their lapses but the level of enquiry

investigation and evidence shall be optimal, credible and shall show application of mind. Accordingly, accused Sudhanshu Bansal is given benefit of doubt and acquitted in present case”.

6. From the above, the Committee noted that the Complainant had failed to produce on record any document to substantiate that the Respondent was appointed as auditor of the Company and that Hon'ble Court had acquitted the Respondent of the allegations made against him. Accordingly, the Committee asked the Complainant that whether it had filed any appeal against the said Order in higher Court. The Complainant denied to have filed any further appeal against the said acquittal Order in favour of the Respondent. In view of the facts that the matter against the Respondent before the Committee and that before the Court were substantively the same and that the Complainant had not filed any further appeal against the Order of the Court even after the lapse of 10 months, the Committee viewed that there was no meaning to consider the matter that had been closed by the Court itself.

Conclusion

7. Thus in conclusion, in the considered opinion of the Committee, the Respondent was held **NOT GUILTY** of Professional misconduct falling within the meaning of Item (2) Part IV of First Schedule and Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

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Order

8. Accordingly, in terms of Rule 19 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee passed an Order for closure of this case against the Respondent.

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Sd/-
(CA. NIHAR N JAMBUSARIA)
PRESIDING OFFICER

Sd/-
(Ms. NITA CHOWDHURY)
GOVERNMENT NOMINEE

Sd/-
(SHRI ARUN KUMAR)
GOVERNMENT NOMINEE

DATE : 28/01/2022

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प्रमाणित सत्य प्रतिलिपि
Sd/-
सौर. सुनील कुमार / CA. Sunil Kumar
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशक / Director
इंस्टीट्यूट ऑफ चार्टर्डेड अकाउंटन्ट्स ऑफ इंडिया
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